

## **“Clinical Observations and Notes”**

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### Physician's Responsibility And The Health Care Decision Act

Physicians and other health care professionals face a difficult situation when a patient's advance directive contains a clear decision about treatment but the patient's family wants to make a different decision. For example, a physician has certified that a patient lacks decision-making capacity and is in terminal condition. The patient's living will says that, under these circumstances, he or she does not want life-sustaining treatment. At the same time, the patient used an advice directive form to designate his or her son as the health care agent (sometimes called a durable power of attorney for health care). The son insists that, “everything be done.”

These kinds of conflicts usually can be resolved through effective communication, especially about the patient's prognosis. Sometimes pastoral care or social work services can be particularly helpful. At other times, an ethics consult can result in a plan of care that is consistent with the patient's wishes and acceptance to the family.

In working to resolve conflicts of this kind, physicians need to know the legal framework in Maryland. Here are the key points:

- Only the patient, while he or she still has capacity, can change or revoke an advance directive. A health care agent or surrogate (a family member or a friend) may not. A legally valid advance directive cannot be dismissed simply because a health care agent or surrogate says that the patient, “didn't really mean this” or “changed his or her mind.”
- Often an instruction in an advance directive is ambiguous, or its application to the present clinical circumstances is unclear. When that happens, a health care agent or surrogate should be given great deference to interpreting the instruction and deciding on a plan of care. After all, the agent or surrogate is presumed to know the patient best and is in the best position to determine what the patient intended when there is reasonable doubt about it. A health care facility should clearly document the process by which the decision was reached.
- When an instruction in an advance directive is unambiguous and clearly applicable to the present clinical circumstances, agents and surrogates are obliged to carry out the instruction. This is so because the Health Care Decisions Act instructs agents and surrogates to base their decisions “on the wishes of the patient,” unless those wishes are unknown or unclear. An unambiguously applicable directive makes the patient's wishes clearly known. Honoring such an advice directive, in accordance with the Health Care Decisions Act, gives the physicians and other health care professionals immunity from suit and disciplinary actions.

- Hospitals and long term care facilities have a regulatory obligation to honor a patient's refusal of treatment, including a refusal in an unambiguously applicable advance directive.
- Nothing in an advance directive or an agent or surrogate's decision affects the legal right of a physician to refrain from providing ethically inappropriate or medically ineffective treatment, in accordance with the Health Care Decision Act.

Jack Schwartz, Esq.  
Assistant Attorney General  
Director, Health Policy Development  
[jschwartz@oag.state.md.us](mailto:jschwartz@oag.state.md.us)